

Title 10: COMMERCE AND TRADE
Chapter 225: TELEPHONE SOLICITATION

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Maine Revised Statutes
Title 10: COMMERCE AND TRADE
Chapter 225: TELEPHONE SOLICITATION

**§1498. AUTOMATED TELEPHONE SOLICITATION PROHIBITED;
EXCEPTIONS; PENALTIES**

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Automated telephone calling device" means any system or equipment, including a facsimile machine, that selects, dials or calls telephone numbers and plays recorded messages or attempts to send facsimiles. [2005, c. 197, §1 (AMD).]

B. "Solicitation calls" means calls, including facsimile transmissions, the purpose of which is any of the following:

- (1) To offer real property, goods or services for sale or rent;
- (2) To convey information on real property, goods or services to solicit sales or purchases;
- (3) To promote or solicit charitable contributions; or
- (4) To gather data or statistics or solicit information. [2005, c. 197, §1 (AMD).]

[2005, c. 197, §1 (AMD) .]

2. Prohibition. A person may not use an automated telephone calling device to make solicitation calls to:

A. Any emergency telephone numbers in this State including, but not limited to, the emergency telephone numbers of any hospital, physician, health care facility, ambulance service, or fire or law enforcement officer or facility; [1989, c. 775, (NEW).]

B. Any paging or cellular phone within the State; or [1989, c. 775, (NEW).]

C. Any unlisted, unpublished, toll-free long distance or direct inward dial telephone number within the State. [1989, c. 775, (NEW).]

[1989, c. 775, (NEW) .]

3. Restriction. A person may not use an automated telephone calling device to make solicitation calls to any telephone number in the State except weekdays between 9 a.m. and 5 p.m., according to the time in this State, and may not complete more than one solicitation call to any telephone number during each 8-hour period. In addition, the person using the device to place the call shall ensure that the device disconnects no more than 5 seconds following the disconnection of the telephone number called.

[1991, c. 524, §2 (AMD) .]

4. Caller identification. Persons making calls restricted under the provision of subsection 3 shall, within the first minute of the call, identify the name, address and telephone number of the organization for whom the call is being made.

[1989, c. 775, (NEW) .]

5. Prima facie violation. Use of any automated calling device that calls telephone numbers sequentially and cannot distinguish the telephone numbers of those authorized to be contacted from those it is unlawful to contact is prima facie evidence of intent to violate this section.

[1989, c. 775, (NEW) .]

6. Exceptions. This section does not prohibit the use of an automated telephone calling device to:

A. Inform purchasers of the receipt, availability or delivery of goods or services or any other pertinent information on the status of any purchased goods or services; [1989, c. 775, (NEW) .]

B. Respond to a telephone inquiry initiated by the person to whom the automated call is directed; or [1989, c. 775, (NEW) .]

C. Carry out the duties of any state or local governmental unit. [1989, c. 775, (NEW) .]

[1989, c. 775, (NEW) .]

7. Registration.

[1999, c. 694, §1 (RP) .]

7-A. Failure to produce transcript. A person using an automated telephone calling device for making solicitation calls shall maintain a full transcript of each solicitation call message that the person has transmitted to consumers during the previous 24 months. A copy of the transcript must be made available to the Attorney General upon request. Failure to provide a copy of a requested transcript is a violation of this section.

[1999, c. 694, §2 (NEW) .]

8. Penalty. Violation of this section is an unfair trade practice as prohibited by Title 5, section 207.

[1999, c. 694, §3 (AMD) .]

SECTION HISTORY

1989, c. 775, (NEW). 1991, c. 524, §§2,3 (AMD). 1999, c. 694, §§1-3 (AMD). 2005, c. 197, §1 (AMD).

§1499. TELEPHONE SOLICITATION

(REPEALED)

SECTION HISTORY

1991, c. 252, §1 (NEW). 1993, c. 589, §1 (AMD). 1995, c. 334, §2 (RPR). 2007, c. 227, §1 (RP).

§1499-A. TELEMARKETING; PROHIBITION ON NUMBER BLOCKING

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Caller identification service" means a service that allows a telephone subscriber to have the telephone number and, where available, name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone. [2003, c. 70, §1 (NEW); 2003, c. 70, §2 (AFF) .]

B. "Seller" means any person who, in connection with a telemarketing transaction, provides, offers to provide or arranges for others to provide goods or services to the customer in exchange for consideration. [2003, c. 70, §1 (NEW); 2003, c. 70, §2 (AFF).]

C. "Telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. [2003, c. 70, §1 (NEW); 2003, c. 70, §2 (AFF).]

D. "Telemarketing" means a plan, program or campaign that is conducted by use of one or more telephones to induce the purchase of goods or services or a charitable contribution and that involves more than one intrastate telephone call. "Telemarketing" does not include the solicitation of sales through the mailing of a catalog that contains a written description or illustration of the goods or services offered for sale, the business address of the seller and multiple pages of written material or illustrations, and that is issued not less frequently than once a year, if the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders without further solicitation. For purposes of this paragraph, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog that prompted the customer's call or in a substantially similar catalog. [2003, c. 70, §1 (NEW); 2003, c. 70, §2 (AFF).]

[2003, c. 70, §1 (NEW); 2003, c. 70, §2 (AFF) .]

2. Prohibition. Except as provided in subsection 3, it is an unfair trade practice, as prohibited by Title 5, section 207, for a seller or telemarketer to fail to transmit or cause to be transmitted the telephone number and, when made available by the telemarketer's carrier, the name of the telemarketer to any caller identification service in use by a recipient of a telemarketing call.

[2003, c. 70, §1 (NEW); 2003, c. 70, §2 (AFF) .]

3. Exception. It is not a violation of subsection 2 for a seller or telemarketer to substitute for the name and telephone number used in or billed for making the call:

A. The name of the seller or charitable organization on whose behalf the telemarketing call is placed; and [2003, c. 70, §1 (NEW); 2003, c. 70, §2 (AFF).]

B. The seller's or charitable organization's customer or donor service telephone number that is answered during regular business hours. [2003, c. 70, §1 (NEW); 2003, c. 70, §2 (AFF).]

[2003, c. 70, §1 (NEW); 2003, c. 70, §2 (AFF) .]

SECTION HISTORY

2003, c. 70, §1 (NEW). 2003, c. 70, §2 (AFF).

§1499-B. TELEPHONE SOLICITATION

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Consumer" means a resident of this State who is a residential telephone subscriber and an actual or prospective:

- (1) Purchaser, lessee or recipient of consumer goods or services; or
- (2) Donor or contributor to an organization. [2007, c. 227, §2 (NEW).]

B. "Consumer goods or services" means:

- (1) Tangible or intangible personal property or real property that is normally used for personal, family or household purposes;

(2) Property intended to be attached to or installed on real property without regard to whether it is actually attached or installed;

(3) Services related to the property described in subparagraph (1) or (2);

(4) Credit cards or the extension of credit; or

(5) Professional services. [2007, c. 227, §2 (NEW).]

C. "Division" means the Department of the Attorney General, Consumer Protection Division. [2007, c. 227, §2 (NEW).]

D. "Doing business in Maine" means making telephone sales calls to consumers located in this State whether the telephone sales calls originate in the State or outside the State. [2007, c. 227, §2 (NEW).]

D-1. "Established business relationship" means a prior or existing relationship formed by a voluntary 2-way communication between a telephone solicitor and a consumer with or without an exchange of consideration on the basis of the consumer's purchase from or transaction with the telephone solicitor within the 18 months immediately preceding the date of a telephone sales call or on the basis of the consumer's inquiry or application regarding products or services offered by the telephone solicitor within the 3 months immediately preceding the date of the call that has not been previously terminated by the consumer pursuant to subparagraph (1) or by the telephone solicitor.

(1) A consumer's request to a particular telephone solicitor not to receive telephone sales calls from that telephone solicitor terminates an established business relationship for purposes of a telephone sales call even if the consumer continues to do business with the telephone solicitor.

(2) The consumer's established business relationship with a particular telephone solicitor does not extend to affiliates of the telephone solicitor unless the consumer would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate. [2007, c. 489, §1 (NEW).]

E. "Registry" means the do-not-call registry maintained by the division that lists the names of persons who do not wish to receive telephone sales calls. [2007, c. 227, §2 (NEW).]

F. "Resident" means a resident of this State. [2007, c. 227, §2 (NEW).]

G. "Telephone number" means a residential telephone number. [2007, c. 227, §2 (NEW).]

H. "Telephone sales call" means a solicitation call made to a consumer for:

(1) Solicitation of a sale of consumer goods or services; or

(2) Obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

"Telephone sales call" includes a call made by use of automated dialing or recorded message devices. [2007, c. 227, §2 (NEW).]

I. "Telephone solicitor" means an individual, firm, organization, partnership, association or corporation, including affiliates and subsidiaries, doing business in Maine. [2007, c. 227, §2 (NEW).]

[2007, c. 489, §1 (AMD).]

2. Application. This section does not apply to:

A. A telephone sales call made in response to and at the express request of the person called; [2007, c. 227, §2 (NEW).]

B. A telephone sales call made primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call; [2007, c. 489, §2 (AMD).]

C. A telephone sales call for a solicitation other than a commercial solicitation, but only if:

- (1) The telephone call is made by a volunteer or an employee of the soliciting organization; and
- (2) The telephone solicitor who makes the telephone call immediately discloses all of the following information:

- (a) The solicitor's true first and last name; and
- (b) The name, address and telephone number of the soliciting organization; or [2007, c. 489, §2 (AMD) .]

D. A telephone sales call made to any person with whom the telephone solicitor has an established business relationship. [2007, c. 489, §2 (NEW) .]

[2007, c. 489, §2 (AMD) .]

3. Compliance with law. This section does not relieve a person from complying with any other applicable law.

[2007, c. 227, §2 (NEW) .]

4. Duties of division. The division shall establish and maintain a do-not-call registry of telephone numbers of consumers who request not to be solicited by telephone. The national "do-not-call" registry established and maintained by the Federal Trade Commission, pursuant to the 16 Code of Federal Regulations, Section 310.4(b)(1)(iii)(B), may serve as the Maine do-not-call registry required by this subsection. The division may provide the telephone numbers of residents that are in the state registry to the Federal Trade Commission for inclusion in the national registry.

[2007, c. 227, §2 (NEW) .]

5. Adoption of rules. The division may adopt rules consistent with Title 5, section 207, subsection 2 to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 227, §2 (NEW) .]

6. Telephone solicitation violations. It is a violation of this section for a telephone solicitor to initiate a telephone sales call to a consumer if that consumer's telephone number has been on the national or state do-not-call registry, established by the Federal Trade Commission, for at least 3 months prior to the date the call is made. A telephone solicitor is not liable for violating this section if the telephone solicitor can demonstrate that:

- A. As part of the telephone solicitor's routine business practice, the telephone solicitor has established and implemented written procedures to comply with this section; [2007, c. 489, §3 (NEW) .]
- B. As part of the telephone solicitor's routine business practice, the telephone solicitor has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to paragraph A; [2007, c. 489, §3 (NEW) .]
- C. As part of the telephone solicitor's routine business practice, the telephone solicitor or another person acting on behalf of the telephone solicitor has recorded and maintained a list of telephone numbers the telephone solicitor may not contact; [2007, c. 489, §3 (NEW) .]
- D. As part of the telephone solicitor's routine business practice, the telephone solicitor uses a process to prevent telemarketing to any telephone number on any list established pursuant to paragraph C or on the national do-not-call registry, employing a version of the national do-not-call registry obtained from the Federal Trade Commission no more than 31 days prior to the date any call is made, and maintains records documenting this process; [2007, c. 489, §3 (NEW) .]

E. As part of the telephone solicitor's routine business practice, the telephone solicitor or another person acting on behalf of the telephone solicitor monitors and enforces compliance with the procedures established pursuant to paragraph A; and [2007, c. 489, §3 (NEW) .]

F. Any subsequent call otherwise violating this section is the result of error. [2007, c. 489, §3 (NEW) .]

[2007, c. 489, §3 (AMD) .]

7. Telephone solicitation disclosure. A telephone solicitor who makes a telephone sales call to a consumer must immediately disclose the following information upon making contact with that consumer:

A. The solicitor's real first and last name; and [2007, c. 227, §2 (NEW) .]

B. The name of the business on whose behalf the telephone solicitor is soliciting. [2007, c. 227, §2 (NEW) .]

[2007, c. 227, §2 (NEW) .]

8. Directories exemption. This section does not apply to a person obtaining consumer information for inclusion in a directory assistance database or a telephone directory sold by a telephone company.

[2007, c. 227, §2 (NEW) .]

9. Exclusion of a telephone number. A telephone solicitor or person who obtains consumer information that includes telephone numbers shall exclude the telephone numbers that appear on the most current federal or state do-not-call registry.

[2007, c. 227, §2 (NEW) .]

10. Unfair trade practice violations. A telephone solicitor who fails to comply with any provision of this section commits an unfair and deceptive act that is a violation of the Maine Unfair Trade Practices Act.

[2007, c. 227, §2 (NEW) .]

11. Attorney General remedies. In an action under this section, the Attorney General may obtain any or all of the following:

A. An injunction to enjoin future violations of this section; [2007, c. 227, §2 (NEW) .]

B. A civil penalty of not more than:

(1) Ten thousand dollars for the first violation; and

(2) Twenty-five thousand dollars for each subsequent violation; [2007, c. 227, §2 (NEW) .]

C. All money the defendant obtained through violation of this section; [2007, c. 227, §2 (NEW) .]

D. The Attorney General's reasonable cost in:

(1) The investigation of the deceptive act; and

(2) Maintaining the action under this subsection; and [2007, c. 227, §2 (NEW) .]

E. Reasonable attorney's fees. [2007, c. 227, §2 (NEW) .]

[2007, c. 227, §2 (NEW) .]

12. Voidable contracts. In an action under this section, the court may void or limit the application of contracts or clauses resulting from a violation of this section and order restitution to be paid to an aggrieved consumer.

[2007, c. 227, §2 (NEW) .]

13. Jurisdiction. An action under this section may be brought in the District Court or Superior Court of the jurisdiction in which an aggrieved consumer resides or in Kennebec County.

[2007, c. 227, §2 (NEW) .]

SECTION HISTORY

2007, c. 227, §2 (NEW). 2007, c. 489, §§1-3 (AMD).

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